



Protecting, maintaining and improving the health of all Minnesotans

December 7, 2015

Kris Herubin
Absolute Body Art

RE: MDH File Number: BAC16021

Dear Mr. Herubin:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you aided or abetted a technician in providing body art services without a license in your establishment, in violation of Minnesota Statutes, section 146B.08, subdivision 3 (5), and Minnesota Statutes, section 146B.03, subdivision 1 (a). Therefore, the Department is issuing you a reprimand and imposing a civil penalty in the amount of \$483. This action is authorized pursuant to Minnesota Statutes, section 146B.08, subdivision 4.

You may either accept the discipline as stated herein or you may appeal. If you accept, please pay the assessed civil penalty by check made payable to "Treasurer, State of Minnesota." If you wish to appeal the discipline, you must provide a written statement as to which facts are in error and the grounds for your appeal. Your written statement must be received within 30 days from the date this letter is received by you. During that 30-day period, you also have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and must include specific grounds for challenging the Department's decision.

You must provide a written statement of your decision to either accept or appeal the discipline outlined in the enclosed Determination, within 30 days of your receipt of this letter, to:

Anne Kukowski, Director of the Health Occupations Program
Minnesota Department of Health
PO Box 64882
Saint Paul, MN 55164-0882

You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Anne Kukowski at (651) 201-3839. If you have any questions about this matter, please contact Chee Lee at (651) 201-3728.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcy Miner". The signature is fluid and cursive, with a checkmark at the end.

Darcy Miner, Director
Health Regulation Division

Enclosure

cc: Anne Kukowski, Director of the Health Occupations Program

**HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of
Absolute Body Art
Duluth, MN
Body Art Establishment**

AUTHORITY

1. The Minnesota Department of Health (MDH) has authority to discipline a body art operator for violations of law under Minnesota Statutes, section 146B.08, subdivision 3. Pursuant to Minnesota Statutes, section 146B.08, subdivision 4, the types of discipline MDH may impose include refusal to grant a license or any reasonable lesser action.
2. Pursuant to Minnesota Statutes, section 146B.08, subdivision 4(5), MDH may also impose a civil penalty, for each violation, not exceeding \$10,000 that deprives the operator of any economic advantage gained by the violation and reimburses MDH for costs of the investigation.
3. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.
4. Pursuant to Minnesota Statutes, section 146B.08, subdivision 3(5), MDH may take disciplinary actions against an operator of an establishment who has aided or abetted another person in violating any provision of this chapter.
5. Pursuant to Minnesota Statutes, section 146B.03, subdivision 1 (a), effective January 1, 2011, no individual may perform tattooing unless the individual holds a valid technician license issued by MDH.

FINDINGS OF FACT

1. Absolute Body Art (hereinafter "Establishment") located at 226 N. Central Avenue, Duluth, is licensed as a body art establishment, under license number 430203, effective November 15, 2013. Kristopher Herubin is the owner (hereinafter "Operator") of the Establishment.
2. On July 16, 2014, MDH received a temporary body art technician application from Thomas Baker (Hereinafter "Technician"). In the application, Operator agreed to be Technician's supervisor.
3. On July 17, 2014, Technician was issued a temporary body art technician license.

4. On July 29, 2015, MDH received a full body art technician license application from Technician.
5. Enclosed with the application was a list of dates, and each client's name, phone number, a short description of the tattoo provided, and the number of hours Technician provided body art service on the client. The list mentioned above was provided by Technician to show proof he had 200 supervised tattoo hours.
6. A review of the list shows Technician had provided 5 body art procedures before July 17, 2014.
7. On September 10, 2015, MDH sent a letter to Operator requesting all informed consent forms in which Technician provided body art before the issuance of Technician's temporary body art license. MDH requested the informed consent forms be sent no later than October 12, 2015.
8. MDH did not receive the informed consent forms by the requested date.
9. On October 15, 2015, MDH sent Operator a Notice of Illegal Practice letter. The letter requested all the informed consent forms in which Technician provided body art before the issuance of Technician's temporary body art license.
10. On October 15, 2015, MDH received by email, 9 scanned informed consent forms, from Operator.
11. On October 16, 2015, MDH sent a letter with further questions to Operator.
12. On November 10, 2015, MDH received an email response from Operator.
13. In the response, Operator stated he allowed Technician to tattoo before the issuance of Technician's temporary body art license because Technician "told me his license was approved and paperwork would be arriving in the mail soon."
14. Operator also stated, "On previous occasions I have asked that we as supervisors be allowed access to information such as application status, license status or investigations. Each time I have asked for info im told it cant be shared with me for privacy reasons. Not having access to this information leaves a huge gap in a supervisors ability to protect ourselfs from situations such as this one."
15. A review of the temporary body art technician application submitted by Technician shows it was mailed on July 14, 2014. Further review shows Operator agreed to be Technician's supervisor by signing and dating the application. His signature is dated July 14, 2014.

16. A review of the informed consent forms shows Technician provided body art twice on July 10, 2014; twice on July 11, 2014; twice on July 12, 2014; and once on July 13, July 14, and July 15 of 2014.
17. Applications in process are private data. However, once an application is denied or approve, that information is public. Whether an individual is licensed as a body artist in Minnesota can be readily determined by checking the Body Art website or by calling the Body Art program.

CONCLUSION

1. Operator failed to comply with the requirements under Minnesota Statutes, section 146B.08 subdivision 3 (5), as he allowed Technician to provide body art services in his Establishment without a license, in violation of Minnesota Statutes, section 146B.03, subdivisions 1 (a).

DETERMINATION

1. Operator is hereby reprimanded and assessed a civil penalty in the amount of \$483, which deprives Operator of the economic advantage gained by the violation and reimburses MDH for costs of the investigation.
 - Operator may pay the \$483 civil penalty in monthly installments for up to 4 months after the effective date of this action. If Operator chooses to make installments, he must notify MDH in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Operator must send this information to: Health Occupations Program, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this document.
 - Each payment will be made by check to "State of Minnesota, Treasurer," and mailed to Health Occupations Program, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, technician may prepay at any time.
 - The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceeding.